Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

In the
Supreme Court of the United States

DAVID BRYTE, Personal Representative of the Estate of Lova E. Bryte, deceased; DAVID BRYTE; KATHY B. SMITH; JAMES B. SMITH; M.E. SMITH, a minor, by and through her legal guardian, Kathy B. Smith; and DONNA J. MILLER,
Petitioners,

v.

AMERICAN HOUSEHOLD, INCORPORATED, formerly known as Sunbeam Corporation; and SUNBEAM PRODUCTS, INCORPORATED,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Has the United States Court of Appeals for the Fourth Circuit entered an opinion in conflict with precedent set by this Court and several courts of appeals for the various circuits, which hold that the substantive law of a state is not to be nullified by the application of the procedural rules of the district court?

2. Has the court of appeals departed from the accepted and usual course of judicial proceedings by not conducting a *de novo* review of the pertinent legal issues in the appeal below, to wit, the district court's failure to apply the substantive West Virginia state law of product liability to the issue of the petitioners' burden of proof, so as to call for an exercise of this Court's supervisory power?

3. Has the court of appeals sanctioned a departure by the district court from the accepted and usual course of judicial proceedings by affirming the district court not applying the substantive West Virginia state law of product liability to the issues of the petitioners' burden of proof, in violation of *Erie R.R. v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1938), and the opinions of various courts of appeals?

4. Did the court of appeals decide an important federal question in a way that conflicts with other relevant decisions of this Court and several courts of appeals, to wit, was the district court's application of the Federal Rules of Evidence to bar the petitioners' expert from expressing any opinions as to the cause of the fire in issue a violation of petitioners' right to have their case heard and decided pursuant to the substantive West Virginia state law of product liability, which permits evidence of

possible causes of the fire, and does not require elimination of all other possible causes of the fire, in a plaintiff meeting their burden of proof?

5. Did the court of appeals decide an important federal question in a way that conflicts with relevant decisions of this Court and several courts of appeals, to wit, was the district court's application of the Federal Rules of Evidence to bar all opinions of the petitioners' expert on the issue of the known defects that cause fires in the product at issue, a violation of petitioners' right to have their case heard and decided pursuant to the substantive West Virginia state law of product liability, which permits evidence of known defects in the product to meet a plaintiff's burden of proof?

6. Did the court of appeals decide an important federal question in a way that conflicts with relevant decisions of this Court and several courts of appeals, to wit, did exclusion of all evidence of the petitioners' witnesses, both lay and expert, on the issue of other similar incidents of fire caused by the same design of the product in issue in this civil action, violate petitioners' right to have their case heard and decided pursuant to the substantive West Virginia state law of product liability, which permits evidence of other similar incidents to meet a plaintiff's burden of proof?

7. Were material facts and legal principles overlooked in the opinion of United States Court of Appeals for the Fourth Circuit, such that the substantive law of the state of West Virginia, as stated in the West Virginia malfunction theory of product liability concerning burden of proof, was not applied to the facts in the trial court record of this case?

RULE 14.1(b) STATEMENT
PARTIES TO PROCEEDING

Petitioners are David Bryte, Personal Representative of the Estate of Lova E. Bryte, deceased; David Bryte; Kathy B. Smith; James B. Smith; M. E. Smith, a minor, by and through her legal guardian, Kathy B. Smith; and Donna J. Miller.

Respondents are American Household, Incorporated, formerly known as Sunbeam Corporation; and Sunbeam Products, Incorporated.

In addition, Sears Roebuck and Company was a party to the proceedings below, but voluntarily dismissed prior to trial.

RULE 29.6 STATEMENT

None of the petitioners are corporations. There is no parent corporation or publically held company owning 10% or more of any petitioner.

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Petitioners David Bryte, Personal Representative of the Estate of Lova E. Bryte, deceased, David Bryte, Kathy B. Smith, James B. Smith, M. E. Smith, a minor, by and through her legal guardian, Kathy B. Smith, and Donna J. Miller, respectfully petition for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is published at *Bryte v. Am. Household, Inc.*, 429 F.3d 469 (4th Cir. 2005). (App. 1a) Petition for Rehearing and Rehearing En Banc was denied without opinion in an Unpublished Order issued December 19, 2005. (App. 21a)

JURISDICTION

The United States Court of Appeals for the Fourth Circuit issued its Opinion on November 21, 2005, *Bryte v. Am. Household, Inc.*, 429 F.3d 469 (4th Cir. 2005)(App. 1a), and its Order Denying Rehearing and Rehearing En Banc on December 19, 2005. (App. 21a) The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Fed. R. Civ. P. 50. Judgment as a Matter of Law in Jury Trials.

(a) Judgment as a Matter of Law.

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient

evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

Fed. R. Evid. 702. Testimony by Experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

STATEMENT OF THE CASE

This Petition seeks review of a decision of the United States Court of Appeals for the Fourth Circuit affirming a Rule 50 Judgment as a Matter of Law in favor of the respondents (defendants below) from the United States District Court for the Northern District of West Virginia. The basis for federal jurisdiction of the United States District Court for the Northern District of West Virginia was pursuant to 28 U.S.C. §1332. Diversity exists between the plaintiffs and the defendants and the amount in controversy is in excess of the jurisdictional amount.